

5830

29 Mar 12

From: [REDACTED], USN

To: Assistant Chief of Staff, Commander, U.S. Naval Forces  
Europe/Africa

Subj: PRELIMINARY INQUIRY INTO THE IMPROPER PROCEDURES USED  
FOR THE HANDLING OF COMSEC MATERIAL AT THE OFFICE OF THE  
COMMANDER, U.S. NAVAL FORCES EUROPE/AFRICA

Ref: (a) (U) JAGINST 5800.7E (JAGMAN)  
(b) (U) SECNAVINST 5430.107  
(c) (U) EKMS-1B

Encl: (1) Preliminary Inquiry Appointment Letter dtd 26 Mar 12  
(2) Summary of Interview with (b) (6), USN, of  
26 Mar 12  
(3) Summary of Interview with (b) (6), USN,  
of 26 Mar 12  
(4) Summary of Interview with (b) (6), USN, of  
26 Mar 12  
(5) Summary of Interview with (b) (6), USN, of  
26 Mar 12  
(6) Summary of Interview with (b) (6), USN, of  
26 Mar 12  
(7) Summary of Interview with (b) (6) of 27 Mar 12  
(8) Suspect's Rights and Acknowledgement/Statement ICO  
(b) (6), USN dtd 26 Mar 12  
(9) Suspect's Rights Acknowledgement/Statement ICO IT2  
Jerry A. Reynard II, USN dtd 27 Mar 12  
(10) NAVCOMTELSTA NAPLES IT 231541Z Mar 12  
(11) NAVCOMTELSTA NAPLES IT 221900Z Mar 12  
(12) IG Visit Initial Feedback of 21 Mar 12  
(13) EKMS Local Element Quarterly Spot-Check Out Brief of  
13 Mar 12  
(14) EKMS Local Element Quarterly Spot-Check of 13 Mar 12  
(15) CMS-25 Destruction Report  
(16) CMS Responsibility Acknowledgement Forms  
(17) Alternate Local Element Custodian Appointment Letter  
ICO (b) (6), USN dtd 14 Apr 11  
(18) Local Element Custodian Appointment Letter ICO  
(b) (6), USN dtd 27 Apr 10  
(19) Alternate Local Element Custodian Appointment Letter  
ICO (b) (6), USN dtd 14 Apr 11  
(20) Alternate Local Element Custodian Appointment Letter  
ICO (b) (6), USN dtd 27 Apr 10

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- (21) COMSEC Material Letter of Agreement dtd 28 Feb 12
- (22) Request for COMSEC Material Support dtd 26 Sep 11
- (23) Memorandum of Agreement btwn NAVCOMTELSTA Italy and  
CNE-CNA OCOM Staff dtd 27 Apr 10
- (24) EKMS Access List dtd 14 Apr 11
- (25) Access to LNSC Bagnoli Technical Office dtd  
14 Apr 11
- (26) (b)(6)'s e-mail dtd 26 Mar 12
- (27) Local Element COMSEC Monthly Training December 2011-  
March 2012
- (28) EKMS Inspection Guide Local Element (Using) dtd  
9 Sep 11
- (29) COMSEC Spot Check Local Element Security dtd  
27 Jan 12
- (30) COMSEC Spot Check Local Element Destruction dtd  
7 Nov 11
- (31) COMSEC Spot Check Local Element Security dtd  
27 Apr 11
- (32) COMSEC Spot Check Local Element Security dtd  
19 Apr 11
- (33) Summary of phone call ICO (b)(6) and IO  
of 28 Mar 12

#### Preliminary Statement

1. As directed by the Assistant Chief of Staff, U.S. Naval Forces Europe/Africa in enclosure (1), I completed a preliminary inquiry in accordance with reference (a) into the circumstances associated with the CNE-CNA Office of the Commander (OCOM) improper handling of COMSEC material.

2. Although this preliminary inquiry is complete, I believe the following two issues merit additional investigation. Both of these require referral to NCIS under reference (b) before any further investigatory action can be taken.

a. There is a possibility that COMSEC material was lost or compromised.

b. There is a credible allegation of a major criminal offense unknown to the Command or to me at the start of this inquiry. Specifically, there is probable cause to believe that (b)(6) solicited a subordinate to commit forgery.



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3. This report was completed expeditiously and is offered to  
serve two purposes:

a. to aid NCIS in any subsequent criminal investigation;  
and,

b. to document progress in the event that NCIS declines to  
investigate and a command investigation into either of the above  
the matters is directed.

4. (b) (6), JAGC, USN, provided legal advice and  
guidance throughout the preparation of this preliminary inquiry.

### Findings of Fact

#### Background

1. OCOM has a dedicated Communications Department that is  
separate and distinct from the N6 Directorate and from  
NAVCOMTELSTA NAPLES (NCTS). [Enclosures 2 & 3]

2. The OCOM Communications Department works closely with N6  
and NCTS across a wide range of communications issues, including  
EKMS and COMSEC management. [Enclosures 2 & 3]

3. Since October 2009, the OCOM Communications Department has  
been led by (b) (6). [Enclosure 2]

4. Since January 2010, the Communications Department LCPO has  
been (b) (6). [Enclosure 3]

5. (b) (6) travels frequently to provide communications  
support to COM. [Enclosures 2, 3, 4, 6, 8 & 9].

6. (b) (6) reported aboard on 23 December 2011 and  
serves as Communications Department LPO. [Enclosure 4]

7. (b) (6) has very limited experience with EKMS and no  
formal COMSEC training. [Enclosures 3 & 4]

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EKMS Local Element (LE) Management

8. The OCOM Communications Department functions as a LE for EKMS purposes. [Enclosures 2, 3 & 7]
9. The LE reports to the EKMS Manager at NCTS, (b)(6), for CMS purposes. [Enclosures 2, 3, 5, 6, 8, 9, 10, 11, 13, 14, 16, 21, 22, 23, 24, 25, 26, 27 & 28]
10. Management of an LE requires one primary custodian and at least one alternate custodian. (Reference (c))
11. (b)(6) was issued a designation letter as primary custodian, and functionally serves in that role. [Enclosure 18]
12. (b)(6), formerly the LPO of the Department, executed PSC orders from the command on 24 February 2012. [Enclosure 2]
13. (b)(6) is designated in writing as the alternate custodian of the LE. [Enclosures 19 & 20]
14. Since 27 April 2011, no new LE designation letters were signed. [Enclosures 17, 18, 19 & 20]
15. (b)(6) reported aboard in September 2011. [Enclosure 2]
16. When (b)(6) reported aboard, he professed knowledge and experience in the field of EKMS. [Enclosures 3 & 9]
17. (b)(6) was assigned functional oversight of the LE EKMS program shortly after reporting aboard. [Enclosure 2, 8 & 9]
18. (b)(6) was never formally assigned any LE responsibilities. [Enclosure 8]
19. (b)(6) discovered several deficiencies upon assuming functional oversight of the LE. [Enclosure 8]
20. EKMS access lists do not include (b)(6) as authorized to access CMS material. [Enclosure 24]



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21. Space access forms have not been updated since 14 April 2011. [Enclosure 24 & 25]
22. (b) (6) requested additional help and resources to correct deficiencies with administration of the LE on several occasions. [Enclosure 8]
23. (b) (6) directed (b) (6) repeatedly to fix the deficiencies. [Enclosures 8 & 9]
24. (b) (6), the recently transferred LPO, was generally perceived as wanting nothing to do with CMS. [Enclosures 8 & 9]
25. (b) (6) has been available to answer questions and to mentor LE personnel. [Enclosures 20, 21]
26. (b) (6) has had concerns about the management of the LE for some time. [Enclosure 9]
27. CMS spot checks were performed multiple times by NCTS personnel, including (b) (6) and the Commanding Officer. [Enclosures 13, 14, 28, 29, 30, 31 & 32]
28. A preliminary inspection was performed on 13 March 2012 by (b) (6). [Enclosures 13 & 14]
29. Neither the CMS spot checks nor preliminary inspection revealed that the space access forms were not current or that the letters of appointment were out-of-date. [Enclosures 13, 14, 28, 29, 30, 31 & 32]

#### Discovery of False Official Statement

30. The IG was scheduled to inspect the LE during the week of 19 March 2012. [Enclosure 2, 3, 7 & 8]
31. The inspection was originally scheduled for the afternoon of Tuesday, 20 March. [Enclosure 2, 3 & 7]
32. The IG inspector, along with (b) (6), instead arrived on the morning of Wednesday, 21 March. [Enclosure 2, 3, 7 & 8]
33. There are differing accounts as to when Communications Department leadership was notified that the inspection was moved

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to Wednesday morning. [Enclosure 2, 3, 8 & 9]

34. The senior person present for the IG inspection was (b)(6). [Enclosures 2, 3, 7, 8 & 12]

35. Customarily the primary or alternate LE custodian is present for inspection. [Enclosure 7]

36. The IG noted that the CMS-25, a locally-generated destruction form, contained suspicious entries. Specifically, although the form purported to document destruction of COMSEC material on various dates, the signatures of the primary and witness were aligned and matched as if all signed at once. [Enclosure 7, 8 & 12]

37. The IG "interrogated" (b)(6) based on the suspicious alignment and consistency of the signatures on the CMS-25. [Enclosure 7, 8 & 12]

38. (b)(6) initially maintained that the material was destroyed as reflected on the CMS-25. [Enclosure 7]

39. After repeated questioning, (b)(6) acknowledged that all of the material signed for on the CMS-25 was destroyed on 1 March. [Enclosure 7]

40. There was one segment of key (hereafter the "missing segment") that was not signed for as destroyed on the CMS-25. [Enclosures 7, 8, 9, 10, 12 & 15]

41. IT2 Reynard signed as the witness for each item of key listed as destroyed on the CMS-25. [Enclosures 7, 8, 9, & 15]

42. IT2 Reynard maintains that he did not notice the date listed on the CMS-25 when he witnessed the destruction, and believed them all to be noted as 1 March. [Enclosure 9]

43. Following discovery by the IG, (b)(6) lined-out the incorrect dates on the CMS-25 and updated the form to reflect all segments were destroyed on 1 March. [Enclosures 8 & 25]

44. The falsified CMS-25 constituted a reportable COMSEC incident. (Reference (c))



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45. The falsified destruction record was reported to the NCTS  
and OCOM chains of command. [Enclosures 2, 3, 7, & 10]

46. NCTS, as the EKMS manager for the LE, reported the  
falsified destruction record via record message traffic.  
[Enclosures 7 & 10]

Discovery of the Missing Segment

47. Following the IG inspection on 21 March 2012, NCTS vault  
personnel performed a local inventory of material at the LE.  
[Enclosure 11]

48. The inventory yielded the discovery that one segment was  
missing. [Enclosure 11]

49. The missing segment was reported to the NCTS and OCOM  
chains of command. [Enclosures 7 & 11]

50. The missing segment was for the NATO SECRET WAN (NSWAN)  
that supports web browsing and e-mail at Villa Nike between the  
COM and NATO commands. [Enclosure 2]

51. The Commanding Officer, NCTS, received concurrence from  
Naval COMSEC Material System (NCMS) to combine the incidents  
into one for investigatory purposes. [Enclosures 7 & 11]

52. NCTS sent an updated incident report following the  
discovery of the missing segment. [Enclosures 7 & 11]

53. (b)(6) and IT2 Reynard maintain they did not destroy  
the missing segment on 1 March 2012. [Enclosures 8, 9, 10, 12 &  
15]

54. (b)(6) and IT2 Reynard did not document destruction  
of the missing segment on the CMS-25. [Enclosures 8, 9, 10, 12  
& 15]

55. Neither (b)(6) nor IT2 Reynard reported the missing  
segment as missing after discovering this fact on 1 March.  
[Enclosures 7 & 11]

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56. IT2 Reynard believed that (b) (6) intended to make the report, but did not follow up to ensure this was completed.  
[Enclosure 9]

57. The Department thoroughly searched their spaces for the missing segment on Thursday and Friday. [Enclosure 9]

58. The missing COMSEC material has not been found. [Enclosure 11]

59. According to the (b) (6), NCMS is responsible for determining if NCIS is involved. (Reference (c))

Solicitation to Commit Forgery

60. Upon notification of the IG inspection in early March 2012, the NCTS CMS Vault requested certain documentation from the LE.  
[Enclosures 3, 4, 7, 8 & 9]

61. (b) (6) from the NCTS Vault told IT2 Reynard that the Letters of Appointment were needed for (b) (6) and (b) (6) as primary and secondary custodians. [Enclosures 8, 9, 14 & 33]

62. (b) (6) reported that he had drafted the new appointing letters, but was not aware whether they were signed.  
[Enclosure 8]

63. IT2 Reynard attempted to locate the letters in the routing chain without success. [Enclosure 9]

64. IT2 Reynard stated that, on the morning of 20 March, (b) (6) instructed him to use Photoshop to alter the appointee and date on the previous letter. [Enclosure 9]

65. IT2 Reynard stated that (b) (6) was present and overheard the instruction. [Enclosure 9]

66. Prior to the IG inspection on 21 March 2012, (b) (6) departed JFC for Capodichino to support COM. [Enclosures 2, 3, 7 & 12]

67. IT2 Reynard stated that (b) (6) reiterated (b) (6)'s order to use Photoshop to alter the appointment



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letter following his departure. [Enclosure 9]

68. IT2 Reynard stated that, following the IG inspection, IT2 Reynard confronted (b)(6) about the order to forge the appointment letter when (b)(6) counseled the Department about the issues the IG identified. [Enclosure 9]

69. According to IT2 Reynard, (b)(6) explained that he did nothing wrong because the letters were not actually altered, and the correct letters were on the EA's desk for signature. [Enclosure 9]

70. Under UCMJ Art. 134, soliciting another to commit an offense is subject to the maximum punishment authorized for the offense solicited or advised.

71. Under UCMJ Art. 123, forgery carries a maximum punishment of Dishonorable Discharge, forfeiture of all pay and allowances, and confinement for 5 years.

#### Administrative

72. Prior to questioning, (b)(6) was given proper Art. 31(b), UCMJ, rights warnings, including cleansing warnings, for false official statement and conspiracy. He properly waived his rights to remain silent and to counsel and provided a statement. [Enclosure 8]

73. Prior to questioning, IT2 Reynard was given proper Art. 31(b), UCMJ, rights warnings, including cleansing warnings, for false official statement, conspiracy, and dereliction of duty. He properly waived his rights to remain silent and to counsel and provided a statement. [Enclosure 9]

74. (b)(6) and (b)(6) were not given rights warnings because at the time of their interview they were not suspected of any criminal misconduct. [Enclosures 3 & 4]

#### Opinions

(b)(5)



~~SECRET (UNCLASSIFIED/FOUO upon removal of enclosures 10, 11 & 15)~~

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(b) (5)



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(b) (5)

(b) (5)

Recommendations

(b) (5)

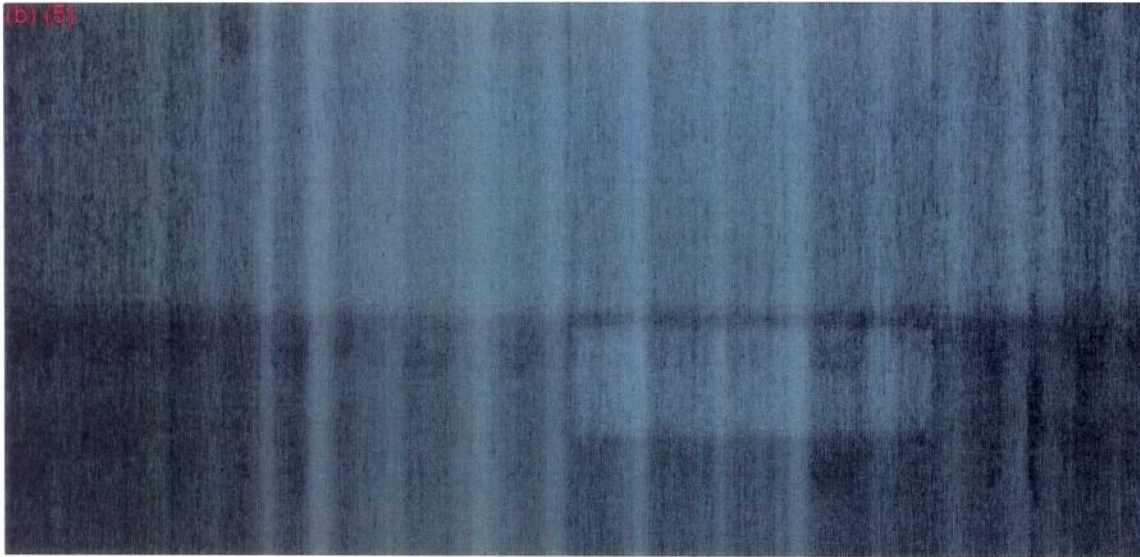
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